

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK CIVIL LIBERTIES UNION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY.

Defendant.

**COMPLAINT**

09 Civ. 5325 (JGK)

ECF Case

**Preliminary Statement**

1. This is an action under the Freedom of Information Act (“FOIA”), seeking the release of agency records requested on October 5, 2007 by Plaintiff New York Civil Liberties Union (“NYCLU”) from Defendant United States Department of Homeland Security (“DHS”), pertaining to a massive surveillance system called the “Lower Manhattan Security Initiative” (“LMSI”), being planned for and implemented in downtown Manhattan.

2. Under the LMSI system, the federal government will help fund a \$100 million project by the New York City Police Department to create a network of thousands of cameras to monitor and track vehicles and pedestrians in the area south of Canal Street in Manhattan. Once implemented, the system will allow the New York City Police Department (“NYPD”), and possibly the federal government, to create and maintain a database of the movement and whereabouts of millions of law-abiding New Yorkers. Therefore, the system’s planning and implementation raise enormous implications for

privacy rights and the lack of public input into the system. Thus, the NYCLU is particularly interested in public disclosure about the scope of the information the system would collect about law-abiding New Yorkers; how the police and federal government would use that information; with whom the police and federal government would share the information; how long the police and federal government would keep the information; any privacy protections that would be part of the system; which private surveillance cameras would become part of the LMSI system; and the extent to which federal funds were being used to create the system.

3. Given the vast privacy implications of the LMSI system, in October 2007 the NYCLU served a FOIA request on DHS's Privacy Office seeking a range of documents pertaining to the planned surveillance system. The Privacy Office then forwarded the NYCLU's request to multiple other DHS components it believed would possess responsive records, but—with the exception of one component that disclosed eight pages of heavily redacted records—none of the other components has located any responsive records. Similarly, the Privacy Office itself initially located no responsive records and only turned over a small number of responsive records after the NYCLU filed a second FOIA request with the Privacy Office.

4. Further, neither the Privacy Office nor any of the other components have timely responded to the NYCLU's administrative appeals.

5. DHS's actions, therefore, violate FOIA and the NYCLU seeks an order that DHS conduct a thorough search for all responsive records, immediately process all located records, promptly disclose the requested records in their entirety and make copies

available to the NYCLU, and award the NYCLU its costs and reasonable attorneys' fees incurred in this action.

### **Jurisdiction and Venue**

6. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(4)(A)(vii) and 5 U.S.C. § 702. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

7. Plaintiff New York Civil Liberties Union ("NYCLU") is the New York State affiliate of the American Civil Liberties Union. The NYCLU is a not-for-profit corporation that defends the civil rights and civil liberties of New Yorkers. To inform the public about government conduct affecting legal rights, the NYCLU publishes newsletters, press releases, know-your-rights handbooks, and numerous other materials. NYCLU publications are available to everyone -- including tax-exempt organizations, not-for-profit groups, law students, and academics -- for no cost or for a nominal fee. The NYCLU also disseminates information through its website -- [www.nyclu.org](http://www.nyclu.org) -- and through an electronic newsletter, which is received by thousands of subscribers.

8. Defendant United States Department of Homeland Security ("DHS") is a Department of the Executive Branch of the United States government, and an agency within the meaning of 5 U.S.C. § 552(f)(1).

**The FOIA Request and the Agency's Response**

9. On October 5, 2007, Plaintiff filed a FOIA request with DHS's Privacy Office seeking: (1) documents received by DHS from the City of New York or the NYPD, or any entities acting on their behalf or as their agent(s), concerning the LMSI, since January 1, 2002; (2) documents sent by DHS to the City of New York or the NYPD, or any entities acting on their behalf or as their agent(s), concerning the LMSI, since January 1, 2002; (3) records in the possession or control of DHS (whether created by DHS or not) that evaluate, assess, describe, authorize, or otherwise discuss the NYPD plan to place a system of video cameras in lower Manhattan in New York City; and (4) records in the possession or control of DHS (whether created by DHS or not) that evaluate, assess, describe, authorize, or otherwise discuss video surveillance systems proposed or employed other than in New York City. This request included, but was not limited to, records concerning the so-called "Ring of Steel" system in London, England. *See* Ex. A (original FOIA request).

10. In response to this request, DHS identified a total of five of its component offices that could contain responsive records: (1) Privacy Office/Executive Secretariat; (2) National Protection and Programs Directorate ("NPPD"); (3) Office of Intelligence and Analysis ("OI&A"); (4) Office of Infrastructure and Geophysical Division ("OIGD"); and (5) Federal Emergency Management Agency ("FEMA").

*Privacy Office*

11. The NYCLU's original request was to the Privacy Office, which responded on October 25, 2007 that it believed that NPPD and FEMA would have responsive records,

and, thus, had forwarded the request to those components. Later, the Privacy Office also informed the NYCLU that it believed OI&A might also have responsive records.

12. In a letter dated November 8, 2007, the Privacy Office wrote to the NYCLU to state that it did not possess any responsive records, but that this determination pertained only to the Privacy Office's response, and that the request had been forwarded to OI&A, NPPD and FEMA.

13. Later, on February 6, 2008, after none of the components identified by the Privacy Office located any responsive records, the NYCLU sent a second FOIA request to the Privacy Office, seeking the same documents it had sought in its October 5, 2007 FOIA request. The NYCLU stated that it had not administratively appealed the Privacy Office's November 2007 response that it could not locate any responsive records because, at that time, the NYCLU was under the impression that the other components—namely NPPD, OI&A and FEMA—would locate responsive records.

14. In a letter dated June 26, 2008, the Privacy Office stated that it was beginning to release to the NYCLU records responsive to the February 6, 2008 FOIA request, attaching to its letter a DHS "Business Opportunities" announcement for "Vehicle Identification/tracking Systems (VI/TS) and License Plate Readers," as well as four packets from vendors of such equipment (two of such packets were fully disclosed, and two were partially redacted). The Privacy Office asked that the NYCLU hold in abeyance any administrative appeal, while the Privacy Office continued to locate and release other responsive records.

15. Next, as stated in a letter dated August 4, 2008, the Privacy Office disclosed three more vendor responses (one of which was disclosed entirely, and two of which were

disclosed with redactions), asking once again that the NYCLU hold in abeyance any administrative appeal pending a final Privacy Office determination on the request..

16. As stated in a final response letter from the Privacy Office, dated September 3, 2008, the office disclosed two partially redacted vendor responses and stated it was withholding one thirteen-page vendor response.

17. In a letter dated October 30, 2008, the NYCLU administratively appealed the adequacy of the Privacy Office's search for responsive records, as well as the office's withholding of the entire thirteen-page vendor response identified in the September 3, 2008 response letter.

18. To date the Privacy Office has not responded to the NYCLU's administrative appeal other than to state that the appeal is in a queue to be processed.

*Federal Emergency Management Agency ("FEMA")*

19. In a letter dated October 25, 2007, the DHS Privacy Office notified the NYCLU that it had referred the NYCLU's October 5, 2007 FOIA request to FEMA, among other DHS components.

20. After the Privacy Office had forwarded to FEMA the NYCLU's October 5, 2007 FOIA request, FEMA, in a letter dated January 26, 2009, indicated that it was disclosing eight pages of records responsive to the NYCLU's request. The letter was accompanied by those eight pages, which were grant funding requests made from entities in New York State, New York City's urban area and Buffalo's urban area to FEMA, State Homeland Security Program (SHSP), Law Enforcement Terrorism Prevention Program (LETPP), Citizen Corps Program (CCP), Urban Areas Security Initiative (UASI), and Metropolitan Medical Response System (MMRS). On each page, the

information redacted for each funding request was the “Investment Name” and “Investment Summary/Purpose” for each project.

21. In a letter dated March 18, 2009, Plaintiff administratively appealed FEMA’s partial denial of access to the “Investment Name” and “Investment Summary/Purpose” in the eight responsive pages it disclosed. Plaintiff cited, *inter alia*, President Obama’s January 2009 FOIA memorandum, which calls for a presumption of openness in processing and responding to FOIA requests.

22. In a letter dated March 23, 2009, Plaintiff sent an addendum to its March 18 administrative appeal letter, asking that DHS representatives consider the U.S. Attorney General’s March 19, 2009 FOIA memorandum to executive department and agency heads, which (like the President’s January 2009 memorandum) calls for a presumption of openness and explains that all records should be disclosed, even if the agency could, as a matter of law, withhold a record or record portion.

23. To date FEMA has not responded to the NYCLU’s administrative appeal.

*National Protection and Programs Directorate (“NPPD”)*

24. In a letter dated October 25, 2007, the DHS Privacy Office notified the NYCLU that it had referred the NYCLU’s October 5, 2007 FOIA request to NPPD, among other DHS components.

25. In a letter dated January 18, 2008, NPPD stated that it had not located any responsive records but would transfer the request to the Office of Infrastructure and Geophysical Division (“OIGD”).

26. In a letter dated February 6, 2008, the NYCLU administratively appealed the adequacy of NPPD’s search for responsive records, especially given that the Privacy

Office itself had referred the NYLCU's request to NPPD on the belief that NPPD was likely to possess responsive records.

27. To date NPPD has not responded to the NYCLU's administrative appeal other than to state that the appeal is in a queue to be processed.

*Office of Intelligence and Analysis ("OI&A")*

28. In a letter dated October 31, 2007, the DHS Privacy Office notified the NYCLU that it had referred the NYCLU's October 5, 2007 FOIA request to OI&A, in addition to other DHS components.

29. After the Privacy Office had forwarded to OI&A the NYCLU's October 5, 2007 request, OI&A, in a letter dated December 11, 2007, stated that it had not located any records responsive to Plaintiff's FOIA request.

30. In a letter dated February 6, 2008, the NYCLU mailed an administrative appeal letter to OI&A, alleging that the component had failed to perform an adequate search for responsive records, especially given that the Privacy Office had referred the request to that component.

31. To date OI&A has not responded to the NYCLU's administrative appeal other than to state that the appeal is in a queue to be processed.

*Office of Infrastructure and Geophysical Division ("OIGD")*

32. In a letter dated January 18, 2008, NPPD advised the NYCLU that it was forwarding the NYCLU's October 5, 2007 FOIA request to OIGD.

33. In a letter dated January 29, 2008, advised the NYCLU that it had not located any responsive records.



34. In a letter dated February 6, 2008, the NYCLU mailed an administrative appeal letter to OIGD, alleging that the component had failed to perform an adequate search for responsive records, especially given that the Privacy Office had referred the request to that component.

35. To date OIGD has not responded to the NYCLU's administrative appeal other than to state that the appeal is in a queue to be processed.

### **Causes of Action**

36. Defendant has violated 5 U.S.C. § 552(a)(3), (6)(A)(ii), by failing to make timely determinations on Plaintiff's administrative appeals and to thoroughly search for, locate and disclose the requested records.

### **Requested Relief**

WHEREFORE, Plaintiff requests that this Court:

1. Order Defendant to conduct a thorough search for all responsive records;
2. Order Defendant to immediately process all located records;
3. Order Defendant to promptly disclose the requested records in their entirety, and make copies available to Plaintiff;
4. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action under 5 U.S.C. § 552(a)(4)(E); and
5. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION, by

s/Matthew Faiella

MATTHEW FAIELLA (MF-9423)  
CHRISTOPHER DUNN (CD-3991)  
ARTHUR EISENBERG (AE-2012)  
125 Broad Street, 19th Floor  
New York, New York 10004-2400  
(212) 607-3300

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New York, NY